IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

Chapter VIII, Rule 32(2) (b))

Description of case

No. 7443/2001 M/S
Shri Ranbir Singh Panwar
and others

Vs.

District Judge, Dehradun and
others.

Approved for reporting.

Not approved for reporting

Date of decision- 15.10.2004

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 7443 (MS) OF 2001

(Old No.17304/1985)

Shri Ranbir Singh Panwar and others. …….Petitioner.

Versus

District Judge, Dehradun and others…….Respondents.

Counsel for the petitioner Sri Gopal Narain and H.S. Nigam
Counsel for the respondent standing counsel.

Hon'ble Rajesh Tandon, J.

Heard Sri Gopal Narain, counsel for the petitioner.

By the impugned order dated 06.08.1985, the learned District Judge has allowed the revision of the Landlord. The order rejecting the release application has been set aside. The petitioner has been permitted to implead the parties as landlord/co-sharers. The file has been remanded to the Rent Control and Eviction Officer for deciding it on merits.

Briefly stated, the proceedings for vacancy were started on the application moved by Sri Sudhir Rawat on 24th June, 1983 in respect of 9 rooms situate at ground floor at Karanpur District Dehradun. The vacancy was declared on 16.01.1984. The landlord has contested the proceedings of the vacancy on the ground that there is no vacancy in the premises as Sri P.S. Chetri was not residing in the disputed premises as a tenant but his wife was the owner of the premises. The counsel for the petitioner has submitted that Smt. Kamla Devi the wife of Sri

P.S. Chetri was one of the co-owner of the property and as such the vacancy can not be declared. It is well settled that the vacancy being since quo non in order to seek release and allotment of the proceedings. Since the release matter has been remanded to the Rent Control and Eviction Officer, the Rent control and Eviction Officer shall first ascertain as to whether the accommodation is vacant or not and thereafter, if he comes to the conclusion that there was a vacancy of the premises in dispute, the proceedings for the allotment and release will continue after following the procedure in accordance with Rule 8 and 9 of U.P. Act No. 13 of 1972. Since, the matter has been remanded to the Rent Control and Eviction Officer for deciding afresh as to whether there exists a vacancy or not so as to give the right to the landlord to file the application under Section 16 of U.P. Act No. 13 of 1972.

The landlord will get a preference as the application for release has to be decided first in view of the law laid down by the Apex Court in the case of Vijay Kumar Sonkar Vs. Incharge District Judge and Others, A.R.C. 1995 Page 1.

Subject to the aforesaid observation, the Writ Petition is allowed. The order of vacancy dated 16.01.1984 is quashed. The matter is sent back to decide the question of vacancy afresh.

(RAJESH TANDON, J.)

15.10.2004

P.S.R